

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH WOODS,

Plaintiff,

-against-

8:18-CV-0145 (LEK/CFH)

TYSON REUCKER, *et al.*,

Defendants.

ORDER

I. INTRODUCTION

This matter comes before the Court following a Report-Recommendation filed on December 12, 2018, by the Honorable Christian F. Hummel, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 16 (“Report-Recommendation”).

II. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); L.R. 72.1(c). If objections are timely filed, a court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” § 636(b). However, if no objections are made, a district court need review the report-recommendation only for clear error. *Barnes v. Prack*, No. 11-CV-857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); *Farid v. Bouey*, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008), abrogated on other grounds by *Widomski v. State Univ. of N.Y. at Orange*, 748 F.3d 471 (2d Cir.

2014). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” § 636(b).

III. DISCUSSION

No objections were filed in the allotted time period. Docket. Accordingly, the Court has reviewed the Report-Recommendation for clear error and has found none. The Court therefore adopts the Report-Recommendation in its entirety.

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 16) is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that Plaintiff’s excessive force claim **SURVIVES**, but all other of Plaintiff’s claims in the Second Amended Complaint (Dkt. No. 14) are **DISMISSED without prejudice**;¹ and it is further

ORDERED, that Plaintiff may, within twenty-one days from the date of this order, file a third amended complaint to cure defects identified in the Report-Recommendation; and it is further

ORDERED, that if Plaintiff files a third amended complaint within twenty-one days, that the Clerk of Court return this case to the Magistrate Judge for further review; and it is further

¹ While the Report-Recommendation does mention dismissing the Second Amended Complaint without prejudice with language perhaps suggestive of dismissal in entirety, R. & R. at 9, the Court treats this as a typographical error, as elsewhere in the Report-Recommendation the Magistrate Judge makes clear that the excessive force claim survives, *id.* at 9–11 (noting that the excessive force claim, “although minimal and vague, at this very early stage, should be permitted to proceed.”).

ORDERED, that if Plaintiff does not file a third amended complaint within twenty-one days, that the Second Amended Complaint be treated as the operative pleading, and the Clerk shall issue summonses and forward them to the U.S. Marshal for service of process upon Defendants. The Clerk shall also forward a copy of the summons and Second Amended Complaint, together with a copy of this Order, by mail to the City of Albany Corporation Counsel; and it is further

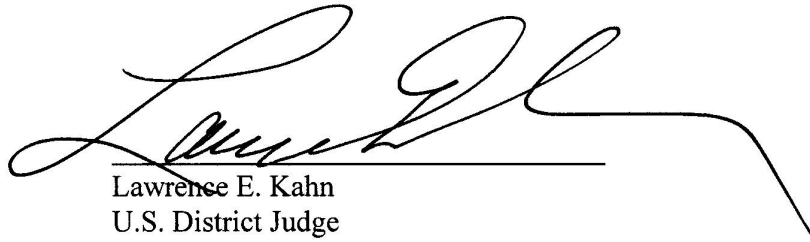
ORDERED, that if Plaintiff does not file a third amended complaint, that Defendants or their counsel shall respond to the Second Amended Complaint as provided for in the Federal Rules of Civil Procedure; and it is further

ORDERED, that all pleadings, motions, and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so may result in the dismissal of this action;** and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on Plaintiff, together with a copy of the Second Amended Complaint.

IT IS SO ORDERED.

DATED: January 11, 2019
Albany, New York



Lawrence E. Kahn
U.S. District Judge